IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

**O R D E R**

(1) S.B.CRIMINAL MISC. PETITION NO. 719/06
(Kamlendra Singh & Anr. Vs. State of Rajasthan & Anr.)

(2) S.B.CRIMINAL MISC. PETITION NO. 1019/06
(Kamlendra Singh & Anr. Vs. State of Rajasthan & Anr.)

(3) S.B.CRIMINAL MISC. PETITION NO. 1353/05
(Kamlendra Singh & Anr. Vs. State of Rajasthan & Anr.)

(4) S.B.CRIMINAL MISC. PETITION NO. 1369/05
(Kamlendra Singh & Anr. Vs. State of Rajasthan & Anr.)

(5) S.B.CRIMINAL MISC. PETITION NO. 1020/06
(Kamlendra Singh & Anr. Vs. State of Rajasthan & Anr.)

(6) S.B.CRIMINAL MISC. PETITION NO. 1234/05
(Kamlendra Singh & Anr. Vs. State of Rajasthan & Anr.)

(7) S.B.CRIMINAL MISC. PETITION NO. 1258/05
(Kamlendra Singh & Anr. Vs. State of Rajasthan & Anr.)

Date of Order : 24/11/2006

**PRESENT**

**HON'BLE MR. JUSTICE H.R.PANWAR**

Mr. Mukesh Vyas for the petitioners.
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. Santosh Choudhary }for the non-petitioner No.2.
Mr. P.C.Solanki }

**BY THE COURT**:-

By these instant criminal misc. petitions under Section 482 Cr.P.C., the petitioners seek quashing of the criminal proceeding in criminal complaint cases No. 1642/04, 92/04,

2692/04, 2584/04, 354/06, 2235/04 and 2691/04.

Since all these petitions involve common question of law and facts, therefore, with the consent of learned counsel for the parties, they are heard and being decided together, taking S.B.Cr. Misc. Petition No. 719/06 as leading case.

I have carefully gone through the complaints filed by complainant non-petitioners.

The non-petitioner No.2 filed a complaint before the Judicial Magistrate No.1, Jodhpur against M/s. United Agrogrowth & Resorts Limited and its Directors namely Kamlendra Singh Chakraveer Singh petitioners herein, Kishan Singh Choudhary and J.S.Bhatt wherein it has been averred that the non-petitioners No. 2 to 5 in the complaint which includes the petitioners herein are the directors of the company and responsible for all the works and activities of the company jointly and severally. It is averred that the non-petitioner No.1 in the complaint the company, floated a scheme and invited deposits at the attractive interest rates as also nominated its agents. The complainant also deposited a sum of Rs. 25,000/- with the company. Subsequently it is alleged that the company made arrangement for the return of amount and issued a post dated

cheque for a sum of Rs. 25,000/- in favour of the complainant duly signed by one of the directors of the company drawn on State Bank of Bikaner and Jaipur, Gopinath Marg, Jaipur. The cheque on being presented to the bank for encashment, dishonoured with the endorsement of 'insufficient fund'. A notice demanding the cheque amount was sent by the complainant to the petitioners, however, the notice was received back with the endorsement 'refused' and thereafter the complaint has been filed.

It is contended by learned counsel for the petitioners that the petitioners are said to be the Directors of the Company and without there being specific averment in the complaint that the petitioners are incharge of and responsible for the conduct of the business of the company, the proceeding against them under Section 138 of the Negotiable Instruments Act (for short 'the Act' hereinafter) is not maintainable. Learned counsel for the petitioners has relied on decision of Hon'ble Supreme Court in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Anr. 2005 (2) W.L.C. (SC) Criminal, 490.

In the complaint filed by the non-petitioner complainant, it has been specifically averred that the petitioners are Directors of the company and for all the works and activities of the company, they are responsible. Thus, in my view, there is

averment in the complaint that the petitioners are responsible for the conduct of the business of the company along with the other Directors as jointly and severally.

It was further contended that the petitioners ceased to be the Directors of the company and therefore, it cannot be said that the cheque in question has been issued to discharge the debt or liability legally enforceable.

These questions are to be gone into at the time of adducing the evidence by the parties or are to be examined at the final stage of the case as to whether on the relevant date of issuance of the cheque, whether the petitioners were the Directors of the company, incharge of and responsible for the conduct of the business of the company or that the petitioners ceased to be the Directors of the company and the cheque in question has been issued to discharge the debt or liability legally enforceable or not. In the instant case, the requirement of Section 141 of the Act is prima-facie fulfilled. In this view of the matter, the judgment relied on by the counsel for the petitioners is of no help to the petitioners.

Learned counsel for the petitioners further contended that so far as petitions No.1020/06, 1234/05 and 1258/05 are concerned, in these cases, the account has been closed, therefore, the petitioners are also not liable for prosecution

under the Negotiable Instruments Act.

It is settled law that the return of a cheque by the bank unpaid on the ground that the account is closed would mean that the cheque is returned as unpaid on the ground that the amount of money standing to the credit of that account is insufficient to honour the cheque, hence it would certainly be an offence under Section 138.

In NEPC Micon Ltd. And Others Vs. Magma Leasing Ltd., (1999) 4 SCC 253, Hon'ble Supreme Court held that the return of a cheque by the bank unpaid on the ground that the "account is closed" would mean that the cheque is returned as unpaid on the ground that "the amount of money standing to the credit of that account is insufficient to honour the cheque". The reason is that the cheque was dishonoured as the amount of money standing to the credit of "that account" was "nil" at the relevant time apart from it being closed. The closure of the account would be an eventuality after the entire amount in the account is withdrawn. It means that there was no amount in the credit of "that account" on the relevant date when the cheque was presented for honouring the same. The expression "the amount of money... is insufficient to honour the cheque" is a genus of which the expression "that account being closed" is a specie. After issuing the cheque drawn on an account maintained, if the drawer closes "that account" apart from the

fact that it may amount to another offence, it would certainly be an offence under Section 138. Hon'ble Supreme Court further held that the dishonouring of the cheque on the ground that the account is closed is the consequence of the act of the drawer rendering his account to a cipher. Hence, reading Sections 138 and 140 together, it would be clear that dishonour of the cheque by a bank on the ground that the account is closed would be covered by the phrase "the amount of money standing to the credit of that account is insufficient to honour the cheque". It has been further held that it would only encourage dishonest persons to issue cheques and before presentation of the cheque close "that account" and thereby escape from the penal consequence of Section 138.

In view of the aforesaid discussion, the petitions have no force and are therefore, dismissed. Interim stay orders stand vacated and stay petitions are also dismissed.

**(H.R.PANWAR),J.**

rp